

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1-4, 6, 8, 22, 23, and 27-33 will be pending in the present application. Claims 37-41 have been cancelled by this Amendment, and claims 5, 7, 9-21, 24-26, and 34-36 were cancelled in the Preliminary Amendment filed on December 29, 2003.

Claim 1 is objected to due to a minor informality regarding the use of the article “a” in lines 14 and 16. Claim 1 has been amended above to correct this informality. Accordingly, applicant respectfully requests that the objection to claim 1 be withdrawn.

Claims 1-4, 6, 8, 29, and 30 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully submits that the above amendments to the claims correct the specific deficiencies cited by the Examiner. In particular, the term “wrap member” has been removed from claim 1, and has been replaced with “body member” in claims 29 and 30. Accordingly, applicant respectfully requests that the above rejection of claims 1-4, 6, 8, 29, and 30 be withdrawn.

Claims 37 and 39 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,640,289 to Craighead (“the ‘289 patent”). In addition, claims 38, 40, and 41 stand rejected under 35 U.S.C. § 103 as being unpatentable over the ‘289 patent”. Applicant respectfully submits that these rejections have been rendered moot due the cancellation of these claims from the present application. Applicant notes for the record that the cancellation of the claims should in not way be construed as an admission that the applicant agrees with the basis for these rejections. These claims have been cancelled to allow the other claims to issue in a timely manner. Applicant reserves the right to file a Continuing application to pursue claims similar, if not identical, to cancelled claims 37-41, including providing arguments as to why these rejections are inappropriate. Accordingly, applicant respectfully requests that the above rejection of claims 37-41 be withdrawn.

Claims 1-4, 6, 8, 22, 23, and 27-33 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6, 8, 22, 23, and 27-33 of U.S. Patent No. 6,671,523 to Fudge et al. ("the '523 patent"). As suggested by the Examiner, a Terminal Disclaimer executed by the undersigned applicant's representative in compliance with 37 C.F.R. § 1.321(c) is submitted herewith to disclaim the term of a patent resulting from the present application from extending beyond that of the '523 patent. Accordingly, applicants respectfully requests that the above obviousness-type double patent rejection be withdrawn.

The Commission is authorized to charge the Terminal Disclaimer fee required under 37 C.F.R. § 1.20(d) to deposit account no. 50-0558. Two copies of a Fee Transmittal form are submitted for this purpose.

This response is being filed within the three-month statutory response period which expires on April 4, 2005 (April 3, 2005 = Sunday). In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge the any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

By Michael W. Haas
Michael W. Haas
Reg. No.: 35,174
Tel. No.: (724) 387-5026
Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525